

In the United States Court of Federal Claims

MICHAEL WHITE,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

No. 23-383
Filed June 12, 2025

ORDER

On June 10, 2025, the court held a preliminary status conference to discuss the parties' proposed discovery schedule. Because a lot of the parties' proposed discovery appears to focus on Mr. White's goal of eventually moving for class certification, the court will wait to enter a discovery scheduling order until after resolving some legal questions about the scope of any proposed class that might be certified in the future. The court has not predetermined whether class certification might be appropriate in this case. But to properly manage the discovery phase of this case, the court is working to avoid the risk of exhaustive discovery regarding individuals whose claims might not be appropriately before the court. This order memorializes and refines the briefing the court noted in the preliminary status conference; the court requests these briefs and will later address a discovery schedule.

The parties' briefs should address the following questions:

1. Would a potential class member have to be a member of Group B who either had a non-cancer diagnosis—including a diagnosis not characterized as the most debilitating—or had a gross income higher than \$200,000?
2. Before what date would a potential class member have to have requested adjudication from the Victims' Compensation Fund? Would he or she have to have filed a claim before December 2015 when Congress passed the act modifying the fund; before June 2016 when

the subsequent amended regulations went into effect; or before some other date, and if it is another date, what is that date?

3. Would a potential class member have to either (a) have requested or attempted to request that he or she be evaluated under the 2011 regulations before being paid an award, or (b) not yet have requested or attempted to request evaluation under the 2011 regulations but also not yet have been paid for the award, as of the date this suit was filed?
4. Alternatively, what criteria would a potential class member have to satisfy in order to satisfy the requirement that a claimant have “notified the Special Master that he or she has elected to have the claim resolved under the regulations that were in effect at the time that the claim was submitted.” 28 C.F.R. § 104.6 (2011).

Because these are questions of law, the parties should assume that there are people who qualify as potential class members; the point of the briefing is to have the parties explain, as a legal matter, what the parameters of the potential class should be and why.

Additionally, in its brief, the government should provide the court with a rough estimate of how many people would qualify under each party’s proposed criteria. That estimate does not need to be substantiated by exhibits or evidence and may be based only on an estimate from the agency.

Mr. White **shall file** his brief by July 31, 2025. The government **shall file** its response by August 21, 2025. Each brief shall not exceed twenty pages, double-spaced in twelve-point font.

IT IS SO ORDERED.

/s/ Molly R. Silfen
MOLLY R. SILFEN
Judge